

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

**NIBCO INC., IN ITS CAPACITY AS THE
SPONSOR AND ADMINISTRATOR OF
THE NIBCO INC. PROFIT SHARING AND
401(K) SAVINGS PLAN,**

Plaintiff,

v.

**AMERICAN FUNDS SERVICE
COMPANY, and THE GROWTH FUND OF
AMERICA, INC.,**

Defendant(s).

CASE NO. 1:09-cv-0319 WTL-TAB

MOTION TO DISMISS COMPLAINT

Defendants American Funds Service Company (“AFS”) and The Growth Fund of America, Inc., (“TGFA”) (collectively, “Defendants”), pursuant to Federal Rule of Civil Procedure 12(b)(6) and S.D.Ind.L.R. 7.1(a), respectfully request that this Court dismiss Plaintiff’s Complaint for failure to state a claim upon which relief can be granted, and in support thereof states:

1. The Complaint should be dismissed with prejudice because Plaintiff as a matter of law cannot state a claim that it was entitled to value its redemption of its mutual fund shares at the price calculated on May 1, 2008. The Complaint admits that AFS received Plaintiff’s redemption order on April 30, 2008. AFS was therefore required under SEC Rules 22c-1(a) and (b)(1) to price Plaintiff’s redemption of shares at the net asset value calculated on that date. Additionally, Plaintiff has failed to adequately allege the elements of a claim for breach of fiduciary duty.

2. Pursuant to S.D.Ind.L.R. 7.1(a), Defendants have filed a separate supporting brief contemporaneously herewith that more fully explains the bases for dismissal of Plaintiff's Complaint.

DATED: May 13, 2009

Respectfully submitted,

By: /s/ Jeffrey B. Bailey
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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2009, a copy of the foregoing Motion to Dismiss Complaint was served via electronic mail on the following persons by operation of the Court's electronic filing system:

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